IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

**ST.Rev..No. 50 of 2003**

TA.272/2001 of S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD

REVISION PETITIONER:: APPELLANT:
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M/S. JAYA JEWELLERS,
PALACE ROAD, THRISSUR, REPRESENTED BY ITS
MANAGING PARTNER, SOORAJ PRAKASH M.J.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS: RESPONDENT:
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THE STATE OF KERALA,
REPRESENTED BY THE GOVERNMENT PLEADER,
HIGH COURT OF KERALA, ERNAKULAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**H.L.DATTU, C.J. & K.T.SANKARAN,J.**

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**S.T.REV. NO. 50 OF 2003**

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**Dated this the 20th September, 2007**

**O R D E R**

**H.L.DATTU, C.J**.

A dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 ('KGST Act' for short) has filed this Revision Petition under Section 41 of the KGST Act, inter alia, questioning the correctness or otherwise of the orders of assessment passed by the assessing authority for the assessment year 1997-98 and the subsequent orders passed by the First Appellate Authority as well as by the Tribunal.

2. The assessee has framed the following two questions of law for our consideration and decision. They are: (1) In the absence of sufficient materials, whether the authorities are justified in resorting to running stock method of assessment, and (2) In the absence of sufficient materials, whether the authorities are justified in estimating the turnover at three times the average running stock.

3. The assessee is a dealer registered under the provisions of the KGST Act. He is doing business in gold jewellery. His shop was inspected by the Sales Tax Officers attached to the Intelligence Wing on 13.10.1997. They have found suppression of stock as well as non-maintenance of books of accounts as required under the Rules framed under the Act. Having noticed the discrepancy, they had seized certain books of accounts, diaries, loose slips found at the time of inspection in the business premises

of the petitioner.

4. The assessee has gone before the authorities to compound the offence departmently. Having realised that the discrepancy pointed out by the Sales Tax Officer is justified, he had also offered to compound the offence departmently in lieu of prosecution by paying a sum of Rupees One lakh as compounding fee.

5. The assessee had filed his annual return for the year 1997-98. The assessing authority has rejected the return so filed by the assessee and based on the report of the Intelligence Wing of the Department, had issued a pre-assessment notice to the petitioner proposing to reject the return so filed by the assessee and also to quantify the tax liability on the estimation basis. The assessee had filed his objection after receipt of the pre-assessment notice. The assessing authority, keeping in view the discrepancy that was pointed out by the Intelligence Wing of the Department at the time of inspection of the business premises of the petitioner on 13.10.1997 and by adopting the running stock method, had proceeded to quantify the tax liability by adding four times the actual suppression detected at the time of inspection. Aggrieved by the said order of assessment passed by the assessing authority for the assessment year 1997-98, the petitioner had filed an appeal before the First Appellate Authority. In the appeal, the First Appellate Authority has modified the estimation of the assessing authority from four times to three times and in all other respefcts, has confirmed the order passed by the assessing

authority.

6. The correctness or otherwise of the said order was questioned by the assessee before the Tribunal. The Tribunal has rejected the appeal filed by the assessee and that is how the assessee is before us in this Revision.

7. The assessee has framed two questions of law for our consideration and decision.

8. The first question of law framed by the assessee, in our opinion, is no more debatable in view of the decision of a Division Bench of this Court in **Jyothi Jewellery** v. **State of Kerala** ((1998) 110 STC 556). In the said decision, a Bench of this Court has observed that the normal method in the jewellery business is estimating the turnover on the running stock method. In this regard the Court has stated as under:

> "This amount of Rs.69,47,290, it is found, was arrived at by adding up the value of the opening stock as on April 1, 1987 and closing stock as on March 31, 1988 and thereafter dividing it by two. This is the normal method accepted throughout to arrive at estimated turnover and there cannot be any quarrel in regard thereto."

9. The decision in ***Jyothi Jewellery's case*** has applied by this Court in the case of **P.R.Balakrishnan** v. **State of Kerala,** T.R.C.No.93 of 2003, disposed of on 10th August, 2007.

10. The running stock method is one of the normal method in jewellery business, if for any reason, the assessing authority finds that the return filed by the assessee cannot be accepted for various reasons.

Therefore, the first question of law raised for our consideration requires to be answered in favour of the Revenue and against the assessee.

11. In so far as the second question of law is concerned, in our opinion, the assessing authority, after rejecting the return filed by the assessee, has completed the assessments by best judgment assessment and while doing so some guess work requires to be done. Taking into consideration the large scale suppression detected at the time of inspection of the business premises of the assessee, the assessing authority thought fit to estimate the taxable turnover of the assessee by multiplying it by four times. This estimation is reduced by the First Appellate Authority. Since the best judgment assessment has been completed by the assessing authority and accepted by the First Appellate Authority and the Tribunal, in our opinion, the second question of law framed by the assessee also requires to be answered against the assessee and in favour of the Revenue.

12. In the result, the Revision fails and it is rejected.

13. In view of the order passed in the Revision, the relief sought for

in I.A.No.404 of 2003 need not be considered by this Court. Accordingly, the said Application is also rejected.

Ordered accordingly.

**(H.L.DATTU)**
**Chief Justice**

**(K.T.SANKARAN)**
**Judge**

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**H.L.DATTU, C.J. &**
**K.T.SANKARAN, J.**

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**S.T.REV..NO. 50 OF 2003**

**O R D E R**

20th September, 2007

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